IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHAWN STITZEL, Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
VINCENT GUARINI, et al Defendants	:	NO. 03-4760

MEMORANDUM

Baylson, J. **June 27, 2006**

I. Introduction

The matter before the Court is Plaintiff Shawn Stitzel's ("Plaintiff") Motion for Relief from Judgment in Civil Action Number 03-4760. For the reasons that follow, the motion is granted.

II. Background

A. Allegations in the Complaint

This is a section 1983 civil rights action, requesting damages for personal injuries allegedly received by Plaintiff because he was denied proper medical care while in state custody. According to the First Amended Complaint, on or about June 12, 2002, Plaintiff fell and fractured his right ankle and foot during the course of his arrest by the Pennsylvania State Police in Lancaster, Pennsylvania. The medical staff at Lancaster Community Hospital placed a plaster cast on Plaintiff's right foot. (First Amended Compl. at ¶¶ 8-1). Around June 13, 2002, Plaintiff saw Dr. Cook, an orthopedist at Lancaster General Hospital, who made further diagnostic inquiries and directed Plaintiff to return to his office within three weeks. Upon return to

Defendant Lancaster County Prison (at which Defendant Vincent Guarini was warden), where he was imprisoned awaiting trial, Plaintiff met with Defendant Dr. Robert Doe regarding his diabetes. At that time, Dr. Doe informed Plaintiff that he was aware that Plaintiff had been advised to follow-up with Dr. Cook regarding his injured foot within two or three weeks. Id. at ¶¶ 8, 10-18. Plaintiff was not returned to Dr. Cook's office until July 22, 2002 (five weeks after his initial visit to Dr. Cook). At that time, Dr. Cook advised Plaintiff that his bones had healed improperly and, as a result, Plaintiff would be permanently impaired. Id. at ¶¶ 22-25.

B. Procedural Background

A ruling on the present Rule 60(b) motion requires a full exposition of the procedural history of the case. The complaint in this action (03-4760) was filed *pro se* by Plaintiff on October 23, 2003. On June 10, 2004, Defendants filed a Motion to a Produce Complete Copy of Plaintiff's Complaint (Doc. No. 13). Noting that text was missing at the bottom of the pages of the original complaint, the Court granted that motion on June 17, 2004, and ordered Plaintiff to produce a complete copy of his complaint within fourteen days, which was by June 30, 2004 (Doc. No. 15). As of August 11, 2004, Plaintiff did not respond and, accordingly, the Court dismissed Plaintiff's complaint without prejudice for failure to file a complete complaint (Doc. No. 16). Sometime at the end of 2004, Plaintiff wrote to the Court to inquire as to the status of his case. Approximately two months later,[1] upon receiving a copy of the June 17, 2004 Order in response to his inquiry, he learned that because he did not respond to it, the case has been dismissed without prejudice on August 11, 2004.

[1]Plaintiff explains that he did not receive the Court's June 17, 2004 Order in a timely fashion because he was transferred between several prisons between June 2004 and early 2005 and did not receive regular mail. He states that he finally received the Order approximately two months after his original inquiry, when he was returned to Lancaster Prison.

Nonetheless, Plaintiff attempted to re-file his complaint on April 7, 2005. On May 2, 2005, construing this as a request to re-open the case, the Court denied the request because of Plaintiff's unexplained delay and directed that the complaint filed on April 7, 2005 be construed as a new case. The new case was subsequently assigned Civil Action Number 05-2111.

On July 17, 2005, Defendants filed a Motion to Dismiss case 05-2111, asserting that under Pennsylvania law, the statute of limitations barred Plaintiff's claims. On December 15, 2005, the Court ordered all proceedings in case 05-2111 to be held in suspense. While this Court has not yet decided the Motion to Dismiss in 05-2111, it appears from the briefs accompanying the instant motion that Plaintiff concedes that there is likely a statute of limitations problem with his claims in case 05-2111.

On February 6, 2006, this Court appointed Alexander Kerr, Esq. of McCarter & English LLP to represent Plaintiff in the 05-2111 case. Members of his firm, Barbara Gotthelf, Esq. and Joann Lytle, Esq., subsequently entered appearance in the instant case, 03-4760. On May 1, 2006, Plaintiff filed the instant Motion for Relief from Judgment (Doc. No. 20).

III. Parties Contentions

Pursuant to F.R. Civ. P. 60(b), Plaintiff asks the Court to vacate the May 2, 2005 Order denying his request to re-open Civil Action Number 03-4760 and to allow him to proceed with the case. Plaintiff avers through his attached affidavit that he did not receive the Court's June 17, 2004 Order directing him to file a complete complaint in a timely fashion because he was transferred between several prisons, including York Prison, between June 2004 and early 2005 and did not receive regular mail. In fact, he urges that it was not until he was returned to Lancaster Prison approximately two months after he originally inquired about the status of the

case in late 2004 that he learned of it.[2] Plaintiff argues that his delay in contacting the Court was therefore due to excusable neglect and that he was faced with exceptional circumstances that prevented him from complying with the June 17, 2004 Order directing him to file a complete complaint. He also argues that enforcing the May 2, 2005 Order would prejudice him because he will likely face a statute of limitations bar in the 05-2111 case, and he asserts that no prejudice will result to Defendants if he proceeds with his case pursuant to Civil Action Number 03-4760.

Defendants argue that the 03-4760 case should remain closed. Defendants claim that the case should not be re-opened because the dated and signed version of Plaintiff's affidavit which accompanied the instant motion was one day late in violation of F.R. Civ. P. 6(d), and in any event, F.R. Civ. P. 60(b) does not apply because the May 2, 2005 Order was not a final order. Next, assuming Rule 60(b) applies, Defendants contend Plaintiff has not satisfied the requirements for excusable neglect under 60(b)(1) and argue that no extraordinary circumstances exist that would warrant relief from the May 2, 2005 Order under 60(b)(6). Finally, Defendants assert that prejudice will result to them if the 03-4760 case is re-opened because the statute of limitations has otherwise run.

IV. Discussion

A. Timeliness of Plaintiff's Affidavit

Defendants first assert that the case should not be re-opened because Plaintiff's Motion for Relief from Judgment was wholly unsupported given that the affidavit was not timely. F.R. Civ. P. 6(d) states that when a motion is support by an affidavit, the affidavit shall be submitted

[2]However, we note that Plaintiff does not specify the date, or even the month, in which he finally received the June 17, 2004 Order.

with the motion.

The Rule 60(b) motion was accompanied by an unsigned copy of the affidavit, but Plaintiff's attorney filed and delivered a signed and dated affidavit the very next day. (Pl. Reply, Ex. B). Plaintiff explains that the delay was due to his incarceration in Somerset County Prison near Pittsburgh. Because of the distance from his lawyers (who are located in Philadelphia), the logistical difficulties that accompany prisoners communicating with their attorneys, and the well-known hazards of the prison mail system, he contends it was more time-consuming than anticipated to talk with his lawyers, receive a draft of the affidavit, sign it, and send it back.

We find Plaintiff's explanations credible. Notably, Plaintiff had mailed the signed and dated affidavit to his attorneys several days before the instant motion was served, but his attorneys had not yet received it in the mail. Because the statute of limitations is one year for motions requesting relief from judgment under 60(b)(1-3), Plaintiff's attorneys needed to file the motion by May 2, 2006 (one year from the May 2, 2005 Order denying Plaintiff's motion to re-open).[3] Plaintiff filed his Motion for Relief from Judgment on May 1, 2006 with the unsigned affidavit attached, and submitted his signed and dated affidavit on May 2, 2006. Because Defendants did receive a copy of the affidavit, albeit unsigned, with the motion, and the signed affidavit and motion were both filed with the Court within the statute of limitations deadline, Defendants were clearly not prejudiced by the one day delay. The Court finds that the Motion for Relief from Judgment and its accompanying affidavit satisfy the requirements of Rule 6(d).

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[3]F.R. Civ. P. 60(b) says "The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken . . ." The rule does not specify if there is a statute of limitations on 60(b)(6), however, courts have interpreted 60(b)(6) as requiring motions be filed within a "reasonable time." Stradley v. Cortez, 518 F.2d 488, 493-4 (3d Cir. 1975) ("[P]laintiff can use 60(b)(6) as a means of avoiding the time bars of . . . 60(b)(1-3)").

B. The May 2, 2005 Order was a Final Order

Defendants next assert that the May 2, 2005 Order in which the Court declined to re-open case 03-4760 and ordered the clerk to accept the complaint as a new cause of action (subsequently 05-2111) was not a final order. Therefore, Defendants contend Plaintiff cannot be granted relief from judgment under Rule 60(b) because the rule accords relief only "from a *final* judgment, order, or proceeding." F.R. Civ. P. 60(b) (italics added).

A final order "is one that ends the litigation on its merits and leaves nothing for the court to do but execute judgment." Selkridge v. United of Omaha Life Ins., 360 F.3d 155, 160 (3d Cir. 2004) (determining that a grant of summary judgment was a final order for purposes of appeal). See also Aluminum Co. of Am. v. Beazer East, 124 F.3d 551, 557 (3d Cir. 1997) ("There is no final order if claims remain unresolved and their resolution is to occur in district court"); Torres v. Chater, 125 F.3d 166, 168 (3d Cir. 1997) (For the purposes of 60(b), an order that "wraps up all matters pending on the docket" renders a decision final). While the Third Circuit has not confronted this specific issue, the Seventh Circuit has determined that the denial of a motion to re-open is a final order. Bronisz v. Ashcroft, 378 F.3d 632, 636 (7th Cir. 2004) (holding that a motion to re-open and a request for relief under 60(b) were analogous and thus, the denial of a motion to re-open was a final order).

Defendants argue that the May 2, 2005 Order declining to re-open case 03-4760 and ordering that the case be assigned a new docket number (05-2111) was not a final order. Defendants contend that the May 2, 2005 Order did not end Plaintiff's cause of action in 03-4760 because the Plaintiff's cause of action remains open in district court under docket number 05-2111. Plaintiff counters that the May 2, 2005 Order was a final order because it fully and finally

disposed of all matters pending on the docket for 03-4760 by dismissing that case.

The Court agrees with Plaintiff. The May 2, 2005 Order directed what should happen to case 03-4760, namely that it be dismissed. It was filed in the docket of 03-4760 and does not appear at all on the docket for 05-2111. It clearly had the effect of terminating case 03-4760, which will remain terminated unless the instant motion is granted. Further, this Court finds persuasive the Seventh Circuit precedent holding that a denial of a motion to re-open is a final order. Bronisz, 378 F.3d at 636. Accordingly, we conclude that the May 2, 2005 Order denying Plaintiff's Motion to Re-open was a final order and therefore, that 60(b) applies in the instant case.[4]

C. Legal standard for Rule 60(b)

Having determined that 60(b) properly applies, we must next determine whether to afford relief under the rule. Plaintiff is asking for relief from judgment under either Rule 60(b)(1) or 60(b)(6).[5] Under Rule 60(b), the Court has discretion to relive a party from final judgment. As relevant to the facts presented here, Rule 60(b) provides as follows:

On motion and upon such terms as are just, the court may relieve a party or a

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[4]The Defendants have moved to dismiss case 05-2111 on the basis that the statute of limitations on Plaintiff's personal injury claim has run. However, the success of the motion to dismiss in case 05-2111 necessarily depends on the existence of a final order in case 03-4760 in which the original complaint was docketed on October 23, 2003, within the two year statute of limitations. Thus, to some extent, the defense has taken inconsistent positions.

[5]Rules 60(b)(1-6) are mutually exclusive provisions. Pioneer Invest. Servs. Co. v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380, 393 (1993). Relief under Rule 60(b)(6) is only available when the relief sought "is based on any other reason than a reason that would warrant relief under 60(b)(1-5)." Stradley v. Cortez, 518 F.2d 488, 493 (3d Cir. 1975). If relief is denied under 60(b)(1), then Plaintiff still has an avenue of attack under 60(b)(6). Pioneer, 507 U.S. at 393; Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 864 (U.S. 1988);Klapprott v. United States, 335 U.S. 601, 613 (1949).

> party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect . . . or (6) any other reason justifying relief from the operation of the judgment. . . .

District courts have a great deal of discretion to grant relief under 60(b), which traditionally has been given a liberal interpretation. Tozer v. Charles A. Krause Milling Co., 189 F.2d 242, 245 (3d Cir. 1951) (granting relief under Rule 60(b) and noting that courts have uniformly held that Rule 60(b) must be given a liberal construction); United States v. Enigwe, 320 F. Supp. 2d 301, 306 (E.D. Pa. 2004) ("A F.R. Civ. P. 60(b) motion to set aside judgment is to be construed liberally to do substantial justice."). This is because the Third Circuit, wherever practicable, favors cases being determined on their merits. Hritz v. Woma Corp., 732 F.2d 1178, 1181 (3d Cir. 1984) (noting that "we have repeatedly stated our preference that cases be disposed of on the merits whenever practicable"); Tozer, 189 F.2d at 245 ("[T]he interests of justice are best served by a trial on the merits, only after a careful study of all relevant considerations should courts refuse to open default judgments.").

D. Plaintiff's Motion Satisfies the Requirement of Rule 60(b)(1) because of Excusable Neglect

Plaintiff first moves for relief under 60(b)(1), which we grant because we find that Plaintiff's neglect was excusable.

1. *Pioneer* Factors for Analyzing Excusable Neglect Under Rule 60(b)(1)

Pursuant to Rule 60(b)(1), the Court may grant relief for "mistake, inadvertence, surprise, or excusable neglect." F.R. Civ. P. 60(b)(1). In Pioneer Invest. Servs. Co. v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380, 393 (1993), the Supreme Court developed a four factor analysis for reviewing excusable neglect. Under the Pioneer analysis, factors to be considered are "the danger of prejudice to the [non-movant], the length of the delay and its potential impact on

judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." 507 U.S. at 395. Further, although Pioneer was a bankruptcy case, the Third Circuit has held that Pioneer's four factor analysis of the excusable neglect standard applies in a F.R. Civ. P 60(b) context. See George Harms Constr. Co. v. Chao, 371 F.3d 156, 163 (3d Cir. 2004).

Several other circuits have found that the four factors are neither exclusive nor equally weighted, and that "the excuse given for the late filing must have the greatest import." See Graphic Commc'ns Int'l Union v. Quebecor Printing Providence, Inc., 270 F.3d 1, 5 (1st Cir. 2001); Lowry v. McDonnell Douglas Corp., 211 F.3d 457, 463 (8th Cir. 2000). See also City of Chanute v. Williams Natural Gas Co., 31 F.3d 1041, 1046 (10th Cir. 1994) (finding that there was excusable neglect under a Pioneer analysis and stating that "fault in the delay remains a very important factor – perhaps the most important single factor – in determining whether neglect is excusable"). However, the Third Circuit has not addressed this issue.

2. Consideration of the Four *Pioneer* Factors

First, we examine Plaintiff's proffered reason for failing to follow the Court's June 17, 2004 Order directing him to file a complete complaint. Plaintiff contends that his transfer from Lancaster Prison to York Prison resulted in him not receiving the June 17, 2004 Order in the mail in time for him to comply. He asserts that he made all reasonable efforts to comply with the Order despite his "limited resources and *pro se* status," (Stitzel Aff. at ¶14, ¶16), and he was further delayed in his effort to type the reply because his access to typing facilities at the correctional institution was limited.

Defendant refutes the idea that the circumstances of receiving the Order were beyond

Plaintiff's control, pointing out that Plaintiff made no attempt to inform the Court of his change of address when he was transferred to York Prison. Defendant argues that the fact that Plaintiff requested an update on his case late in 2004 demonstrates that Plaintiff was fully capable of contacting the Court, but neglected to do so.

In fact, Plaintiff does not specify the date or even the month he received the June 17, 2004 Order directing him to file a complete complaint. He only states it was approximately two months after his late 2004 inquiry to the Court. Further, he does not provide the Court with the dates when he was moving between prisons, making it difficult to approximate when he received June 17, 2004 Order. Moreover, he did not file his complete complaint pursuant to the Order until April 7, 2005, many months after his inquiry. Plaintiff does not explain this delay except to say his efforts to type his complaint were hampered by his lack of access to typing facilities. That said, although belated and unspecified, Plaintiff seems to have made the efforts he did in good faith, ultimately responding to the Order, and ultimately typing and submitting a complete complaint.

Some courts, whose opinions we find persuasive, have granted relief based on excusable neglect in similar circumstances. In Doyle v. McFadden, 2003 WL 1337824, at *2 (S.D. Ohio Mar. 3, 2003), a case cited by Plaintiff, the court granted relief under 60(b)(1) where the plaintiff claimed that he did not receive the orders of the court directing him to notify the court if he intended to go forward with the prosecution of the case and entered judgment against him. Similarly, in Sacco v. Matter, 154 F.R.D. 35 (N.D.N.Y. 1994), also relied upon by Plaintiff, the court granted relief under 60(b)(1) for excusable neglect where the *pro se* Plaintiff failed to reply to a motion to dismiss and failed to inform the court of his new address. Analogous to the case at

hand, the plaintiff in Sacco claimed that the reason for the delay was that he was transferred many times between prisons. Sacco, 154 F.R.D. at 36.

Regarding the next Pioneer factor – prejudice – Plaintiff asserts that enforcing the May 2, 2005 Order would prejudice him because he will likely face a statute of limitations bar in the 03-4760 case. Defendants counter they too face prejudice if the 03-4760 case is re-opened because the statute of limitations on Plaintiff's claims has expired.[6]

To support a finding that prejudice will result from removing a default judgment, a party must show that, since the judgment, their ability to continue has been hindered by a "loss of available evidence, increased potential for fraud or collusion, or substantial reliance upon the judgment." Feliciano v. Reliant Tooling Co., 691 F.2d 653, 657 (3d Cir. 1982) (granting relief under 60(b) in part because the setting aside of a default judgment did not establish the a degree of prejudice to the non-movant sufficient to compel the court to deny relief). The First Circuit has held that re-opening a case does not create sufficient prejudice to the non-movant to refuse relief from judgment, stating "[o]f course, it is always prejudicial for a party to have a case re-opened after it has been closed advantageously by an opponent's default. But we do not think that is the sense in which the term 'prejudice' is used in Pioneer." Pratt v. Philbrook, 109 F.3d 18, 22 (1st Cir. 1997); cf. In re Lynch, 2004 WL 2977562, at *4 (Bankr. D. Pa. Dec. 16, 2004)

[6]In federal civil rights cases, federal courts look to state law to determine the appropriate statute of limitations. Wilson v. Garcia, 471 U.S. 261, 276 (1985). Under Pennsylvania law, the two-year statute of limitations applicable to personal injury actions applies to claims under 42 U.S.C. § 1983. Lake v. Arnold, 232 F.3d 360, 369 (3d Cir. 2000) (noting that a federal court should use the statute of limitations under Pennsylvania law unless its application would conflict with the Constitution or with federal law). The incidents underlying Plaintiff's claim occurred between June 12, 2002, and July 22, 2002. Therefore, if Plaintiff's case may only proceed under 05-2111, which was filed April 7, 2006, more than two years have elapsed. In contrast, case 03-4760, opened on August 19, 2003, and for which the original complaint was docketed on October 23, 2003, was filed within the two year statute of limitations.

(finding that the loss of an advantageous ruling was not sufficiently prejudicial to deny relief under 60(b)). Specifically, absent other evidence of prejudice, the court in Pratt held that merely re-opening a case would not hinder the ability of the non-moving party to continue. Pratt, 109 F.3d at 22.

Here, if the 03-4760 case is re-opened, Defendants will be barred from asserting that the statute of limitations has run, a colorable defense to the 05-2111 case. However, even without this defense, Defendants have not suggested that they have been hindered by "loss of available evidence, increased potential for fraud or collusion, or substantial reliance upon the judgment" since the entry of the August 11, 2004 Order to dismiss case 03-4760. Feliciano, 691 F.2d at 657.

Regarding the remaining prongs, Plaintiff appears to have acted in good faith. He typed his complaint and re-filed a complete complaint pursuant to the June 17, 2004 Order, albeit months later. Additionally, he now has counsel to assist him with his case. The length of the delay, while quite long (June 17, 2004 to April 7, 2005), has not had significant effects on the judicial proceedings.

Having considered all the Pioneer factors, the Court therefore finds that Plaintiff's neglect was excusable. There is not sufficient prejudice to Defendant to prevent the re-opening of the case, while denying the motion would completely prevent Plaintiff from pursuing his case. The delay can reasonably be explained by Plaintiff's having been transferred between prisons and not timely receiving mail. Plaintiff acted in good faith once he received a copy of the June 17, 2004 Order directing him to file a complete complaint, complying with its mandate. The length of the delay, while substantial, had little effect on the judicial proceedings.

E. Plaintiff's Motion Also Satisfies the Requirement of Rule 60(b)(6) because of Extraordinary Circumstances

Plaintiff asks, in the alternative, for relief under Rule 60(b)(6), which we also grant because we find that Plaintiff's transfer between prisons and *pro se* status are extraordinary circumstances.[7] However, we find that the statute of limitations bar likely faced by Plaintiff in case 05-2111 is not an extraordinary circumstance.

Rule 60(b)(6) is a catchall provision that allows a court to relieve a party from the effects of an order for "any other reason justifying relief from the operation of the judgment." F.R. Civ. P. 60(b)(6). To justify relief under 60(b)(6), the party must show "'extraordinary circumstances' suggesting that the party is faultless in the delay." Pioneer, 507 U.S. at 393. The party seeking relief has the burden of showing that absent such relief, an "extreme" and "unexpected" hardship will result. Boughner v. Secretary of Health, Education & Welfare, 572 F.2d 976, 978 (3d Cir. 1978) (granting relief under 60(b)(6) where plaintiff showed that the conduct of his attorney had been so grossly negligent that to deny him relief would impose extreme hardship). Moreover, some courts have noted that the requisite showing "seems less stringent for *pro se* litigants," who face unique challenges and procedural obstacles. Sacco, 154 F.R.D. at 35.[8]

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[7]We recognize that Rules 60(b)(1) and 60(b)(6) are mutually exclusive provisions, and having granted relief under 60(b)(1), we need not reach 60(b)(6). Pioneer, 507 U.S. at 393. However, we merely state as an alternative holding our reasons for granting relief under 60(b)(6), if for some reason relief was deemed inappropriate under 60(b)(1).

[8]In another procedural context, the Supreme Court has echoed this sentiment. See Houston v. Lack, 487 U.S. 266, 271-272, 276 (1988) (regarding a failure to file a timely notice of appeal, the court modified the mailbox rule, noting there are extreme procedural obstacles faced by *pro se* prisoners, including mail delays and the difficulty of monitoring their case dockets and the court). See also La Bounty v. Adler, 933 F.2d 121, 122 (2d Cir. 1991) (stating that courts should be flexible with time requirements and defaults where a *pro se* litigant is concerned because of the unique logistical challenges faced by *pro se* prisoners and citing to Houston).

1. The Statute of Limitations Bar Does Not Constitute Extraordinary Circumstances Under Rule 60(b)(6)

As noted in detail above, Plaintiff argues that his failure to comply with the June 17, 2004 Order directing him to file a complete complaint was because of extraordinary circumstances beyond his control, specifically, that he was transferred between prisons and did not receive his mail. He contends that extreme hardship will be imposed on him if relief is not granted in case 03-4760 because in his new case, 05-2111, the claims will be barred by the statute of limitations. Plaintiff relies on Thomas v. Rapone, 1985 WL 3576, at *2–3 (E.D. Pa. Nov. 1, 1985), in which Judge Ditter of this court granted 60(b)(6) relief when the plaintiff failed to file a response in time, concluding that when a dismissal would result in a possible limitations problem, the "adverse effect on Plaintiff lingers beyond the immediate effect of the dismissal." However, in Thomas, the statue of limitations problem resulted from a delay caused by the movant's attorney, and thus was beyond the plaintiff's control. In this present case, the expiration of the statute of limitations was brought on in part by Plaintiff's own delay.

Instead, we find Morris v. Horn, 187 F.3d 333, 339, 343 (3d Cir. 1999), more on point. In Morris, the plaintiff asked for relief under Rule 60(b) from a judgment dismissing a habeas corpus petition due to lack of exhaustion of state remedies. The court held that the possible statute of limitations bar which might result in the federal claim while he pursued state remedies did not constitute "extraordinary circumstances" such as to warrant relief under 60(b)(6) because the statute of limitations problem was only a possibility, not a definite outcome, and the problem was caused by Morris' own failure to appeal the adverse district court order in a timely manner. The Ninth Circuit has also decided that a statute of limitations problem does not constitute "extraordinary circumstances" unless the bar was the result of circumstances beyond plaintiff's

control. Abar v. ACandS, Inc., 1996 WL 183752, at *2 (9th Cir. 1996) (denying relief under 60(b)(6) where plaintiff was facing a statute of limitations bar but had failed to provide evidence that the bar was a result of circumstances beyond his control).

Like the plaintiffs in Morris and Abar, the Court finds that Plaintiff's statute of limitations problem does not create an extraordinary circumstance for which relief can be granted under 60(b) because the problem was not a result of circumstances beyond Plaintiff's control.

2. Being Transferred Between Prisons and Plaintiff's *Pro Se* Status Constitute Extraordinary Circumstances Under Rule 60(b)(6)

However, other facts and Supreme Court precedent compel us to find extraordinary circumstances which warrant relief from judgment under 60(b)(6).

In Klapprott v. United States, 335 U.S. 601, 613-614 (1949), applying F.R. Civ. P. 60(b)(6), the Supreme Court reversed the circuit court's denial of the plaintiff's petition to set aside default judgment. There, the plaintiff was a German immigrant, who had been served with a complaint to set aside his naturalization, but he could not afford a lawyer to defend himself. Further, because he was detained on unrelated criminal charges, which turned out to be without merit, he was not permitted to attend his naturalization hearing, resulting in the entry of default judgment de-naturalizing him. Klapprott, 335 U.S. at 601. Thus, the Supreme Court held that extraordinary circumstances were present that necessitated modification of the default judgment. Id. at 615.

Like Klapprott, Plaintiff was *pro se* at the times relevant to this motion, and has been in correctional facilities that allow him no control over his movements. Also like Klapprott, it was this involuntary incarceration — and the barriers attendant with such incarceration — that

underlaid the default. Further, to deny the instant motion is to deny Plaintiff his day in court, a result which is disfavored. Klapprott, 335 U.S. at 615; Hritz, 732 F.2d at 1181. Accordingly, pursuant to Klapprott, the Court finds that Plaintiff's being transferred between prisons and his *pro se* status are exceptional circumstances for which relief may be granted under 60(b)(6).

V. Conclusion

For the reasons stated above, the Court concludes that the Plaintiff's delay in complying with the June 17, 2004 Order was due to excusable neglect, and thus, Defendant's Motion For Relief from Judgment will be granted under 60(b)(1). In the alternative, relief will be granted under 60(b)(6) because the Court believes Plaintiff's being transferred between prisons and his *pro se* status are extraordinary circumstances compelling relief from judgment.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHAWN STITZEL,		:	
Plaintiff,		:	
		:	CIVIL ACTION
	v.	:	
		:	
VINCENT GUARINI, et al		:	
Defendants		:	NO. 03-4760
		:	
		:	

ORDER

AND NOW, this day of June 2006, based on the foregoing memorandum and upon consideration of the pleadings and briefs, it is hereby ORDERED that Plaintiff's Motion for Relief from Judgment (Doc. No. 20) is hereby GRANTED. The Clerk shall re-open Civil Action No. 03-4760.

BY THE Court:

/s/ Michael M. Baylson

MICHAEL M. BAYLSON, U.S.D.J.